

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

KATHLEEN L. LYONS, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil No. 95-0194-B
	)	
JESSE BROWN, et al.,	)	
	)	
Defendants	)	

***MEMORANDUM OF DECISION***<sup>1</sup>

This is an action alleging sexual harassment on the part of Defendant Nikhil Pathak, a doctor and director of the Renal Dialysis Unit at the VA Medical and Regional Office Center at Togus, Maine, where Plaintiff was employed at the time of the facts alleged in the Complaint. Named as Defendants in addition to Nikhil Pathak are the Secretary of the Department of Veterans Affairs ["THE VA"] and Dr. Eugene M. Beaupre, Dr. Pathak's supervisor.

Plaintiff's Motion for Partial Summary Judgment (Docket No. 37) raises three issues. First, Plaintiff seeks judgment on the question whether the VA is deemed to have admitted the fact of the alleged harassment by virtue of a disciplinary proceeding in which Defendant Pathak was found to have harassed Plaintiff. Second, Plaintiff seeks judgment on the question whether Defendant Pathak was Plaintiff's supervisor at the time in question. Finally, Plaintiff seeks judgment on her Complaint as against the VA on the basis of favorable rulings from the Court on the first two issues. Defendant VA objects to Plaintiff's Motion, and seeks judgment in its favor on each of the questions raised (Docket No. 44).

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

### ***I. The VA's 'admission.'***

The Court concludes that the VA is entitled to judgment as a matter of law on the question whether Defendant's internal administrative finding of sexual harassment constitutes an 'admission' for purposes of this action under Title VII. Plaintiff has cited no authority for its position that the finding is binding on Defendant in this action, and the Court has found none. Rather, the Court is persuaded by the reasoning set forth by the Fourth Circuit Court of Appeals in *Dennis v. County of Fairfax*, 55 F.3d 151, 154 (4th Cir. 1995):

... [I]f corrective action operated in a court of law as a confession of liability, untoward consequences would result. Employers would have little or no incentive to investigate allegations of discrimination in the workplace. Because investigation might lead to the discovery of possible discrimination, employers would place themselves in a delicate spot: to allow the discriminatory action to stand might result in liability for the employer because it is on notice of the troublesome behavior, . . . but to take corrective action might be to admit full-blown discrimination. Thus, not only would employers lack motivation to investigate complaints of discrimination, but they might actually be better off (in terms of avoiding liability) to affirmatively ignore them.

### ***II. Dr. Pathak's authority.***

Plaintiff argues that Defendant Pathak was Plaintiff's supervisor within the meaning of Title VII, such that the VA is liable for his conduct. The Court finds a dispute with respect to this material fact. Plaintiff has presented evidence that Defendant Pathak had administrative responsibilities within the Renal Dialysis Unit at Togus, including certification of the qualifications of the Unit's nursing staff. Plaintiff further asserts that Defendant Pathak was Plaintiff's supervisor for purposes of the Epoguin Research Project, which Project necessitated the trip to Chicago during which many of the facts presented in the Complaint are alleged to have occurred.

Defendant, of course, offers contrary evidence on each of these points. Inasmuch as the Court is required to view the evidence in the light most favorable to the non-moving party, *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993), on this record, neither party is entitled to judgment as a matter of law on this question.

In light of the Court's resolution of the first two issues raised in Plaintiff's Motion for Summary Judgment, judgment in Plaintiff's favor on Defendant VA's liability would be inappropriate.

### ***Conclusion***

For the foregoing reasons, Plaintiff's Motion for Partial Summary Judgment is hereby DENIED in its entirety. Defendant's Cross-Motion for Summary Judgment is hereby GRANTED to the extent that the administrative finding of sexual harassment does not constitute an admission of liability for purposes of this litigation, and is in all other respects DENIED.

***SO ORDERED.***

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Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated at Bangor, Maine on January 7, 1997.